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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,210	12/09/2003	B. Thomas Barker	4002-	4618

7590 12/26/2007  
Woodard, Emhardt, Moriarty, McNett & Henry LLP  
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Suite 3700  
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Indianapolis, IN 46204-5137

EXAMINER
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SWIGER III, JAMES L

ART UNIT	PAPER NUMBER
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3733

MAIL DATE	DELIVERY MODE
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12/26/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/731,210

**Applicant(s)**

BARKER ET AL.

**Examiner**

James L. Swiger

**Art Unit**

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 44-58 and 69-76 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 44-58 and 69-76 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/9/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 44-53, 55-56, and 69-76 are rejected under 35 U.S.C. 102(b) as being anticipated by Nichols (US Patent 6,090,111). Nichols discloses a medical implant apparatus having a receiver member (10) having a longitudinal axis (see proximate the "3" in Fig 1), with an upper opening portion (38) and a lower opening portion (see 40 from Fig. 3), and a channel communicating with said upper opening (see Fig. 2), an interior groove (64) that is substantially perpendicular to the axis, and a lower opening portion that is cylindrical and having a diameter (see the bottom cut grooves in Fig. 4-- the head of the screw is circular and fits into this appropriately shaped groove). Nichols also has a retaining member with an inner and outer dimension (its ring with a thickness--42), and wherein the outer dimension is larger than said lower portion because as shown in fig. 3, when it fits into the groove, the outer portion extends beyond the lower opening portion. This retainer member is also considered a ring with a gap. Nichols also discloses a longitudinal member that fits partially within the channel (12), as well as a bone anchor (14). In alternative wording of the claims, applicant is also claiming the portion above and below the groove in a (first and second cylindrical

portion). See item 36/38 in fig. 4. Note the upper section and lower sections are divided by the receiver member 42 which sits in the groove. Additionally the groove has an upper limiting portion and lower limiting surface, which essentially created the groove as it is cut into the side of the receiver member.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 54 and 57-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols '111 in view of Barker et al. (US Patent 6,280,442). Nichols discloses the claimed invention except for a channel having reverse angle threads. Barker et al. disclose reverse angle threads for better securing the receiver member (Col. 5, lines 15-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Nichols having at least reverse angle threads in view of Barker et al. to better secure the receiver member in use of the device.

### ***Response to Arguments***

Applicant's arguments with respect to previous claims have been considered but are moot in view of the new ground(s) of rejection.


**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

 12/18/07

JLS

  
COMMUNICATIONS SECTION